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No. 75-657

In the Supreme Court of the United States

OCTOBER TERM, 1975

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, PETITIONERS,

v.

JOHN T. DUNLOP, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF LABOR

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The question presented in this case is whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification" on the right of candidacy within the meaning of Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 533, 29 U.S.C. 481(e), when its effect is to disqualify 96.5 percent of the local union membership.

1. This action was brought by the Secretary of Labor under Section 402 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482 ("LMRDA"), to

set aside an election of officers conducted in June 1970 by Local 3489, United Steelworkers of America, at Terre Haute, Indiana. The complaint alleged that the Local had imposed an unreasonable qualification for candidacy for local union offices, in violation of Section 401(e), and had failed to elect its officers by secret ballot, in violation of Section 401(b). The United Steelworkers of America intervened as a party defendant.

The district court dismissed the complaint, finding that no violation of the Act had occurred (Pet. App. 22a). The court of appeals reversed and ruled in the Secretary's favor on both grounds (Pet. App. 15a). Petitioners seek review only of the court of appeals' ruling that the union's meeting attendance rule is unreasonable under Section 401(e).

Most of the facts regarding the rule and its effects in this case were stipulated. Imposed by the international union's constitution, it restricts candidacy for local union office to members in good standing who have attended at least 18 of the 36 regular monthly meetings of the local preceding the triennial election (unless union activities or work hours preclude attendance). At the time of the 1970 elections, Local 3489 had approximately 660 members in good standing, of whom only 23 were able to satisfy this precondition to candidacy. Ten of the 23 were incumbent officers. Only thirteen candidates appeared on the ballot for a total of ten offices. Six of these candidates ran unopposed (Pet. App. 2a-3a).[1]

In *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, this Court invalidated a rule restricting eligibility for major union offices to members

[1]Bernard Frye, an unsuccessful candidate for president, complained of the rule to the union and, having exhausted his union remedies without securing relief, thereupon to the Secretary (Pet. App. 3a-4a).

who had previously held union office. In that case the candidacy limitation rendered 93 percent of the union members ineligible for office, and the Court said that a rule having such an effect "can hardly be a 'reasonable qualification' " under Section 401(e) (391 U.S. at 502). Here the meeting attendance rule disqualified 96.5 percent of the local union's membership from office, and the court of appeals said that it "it cannot be deemed a reasonable qualification either" (Pet. App. 7a).

The court did not, however, rest its judgment on a determination that the meeting attendance rule was *per se* unreasonable. While the court acknowledged that the disqualification of so high a percentage of the union membership might in itself be unreasonable (Pet. App. 8a), it held that the unreasonableness of the meeting attendance rule here was also shown by its tendency to produce other results inimical to the purposes of the LMRDA. Thus, the rule perpetuates "entrenched leadership" by making would-be challengers to union officers plan their campaigns at least 18 months before the next election, even though they might have been content with the incumbent leadership at that time, and by disqualifying prospective candidates who had assiduously attended meetings for as long as 17 months in a row (Pet. App. 9a).

The court discounted petitioners' reliance on an outdated section of the LMRDA Interpretative Manual issued by the Secretary which provided that a two-year, 50 percent meeting attendance requirement would not be deemed unreasonable under Section 401(e).[2] As the court pointed out (Pet. App. 10a), "the three-year rule can be 50 per-

[2]The provision, Section 422.206 of the Manual, had been superseded by 29 C.F.R. 452.38, which provides that in place of "arbitrary guidelines" reasonableness is to be judged "in the light of all the circumstances of the particular case."

cent harsher," and "the reasonableness of the two-year rule does not determine the reasonableness of the three-year rule."

The court of appeals also rejected the argument that the three-year 50 percent meeting attendance rule was reasonable since it was ostensibly designed to insure candidates' interest in and knowledge of union affairs, noting that a similar claim had been made in support of the candidacy qualification invalidated in the *Hotel Employees* case. Nor could the rule be justified as an inducement to attendance at union meetings when it barred 96.5 percent of the members from candidacy for local office yet produced an average meeting attendance of 47 out of 660 members. Finally, the court noted (Pet. App. 11a) that only one other national union had specified a three-year period during which a member must attend meetings to qualify as a candidate for local union office.

2. The instant case is one of numerous actions filed by the Secretary challenging elections held by local unions of the United Steelworkers of America because of the imposition of the three-year 50 percent meeting attendance requirement.[3] The first appellate decision on the merits of the rule was rendered in *Brennan* v. *Local 5724, United Steelworkers of America*, 489 F.2d 884, 889 (C.A. 6),

[3]The first case to reach a court of appeals was *Shultz* v. *Local 6799, United Steelworkers of America*, 426 F.2d 969 (C.A. 9) (affirmed *sub nom. Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333), where no decision was reached with respect to the reasonableness of the rule because it had not been the subject of exhaustion of internal union remedies before a complaint was filed with the Secretary. For the same reason, there was no appellate decision on the merits of the issue in *Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F.2d 565 (C.A. 6), or in *Shultz* v. *Local 1150, United Steelworkers of America*, No. 71-1467, decided July, 1971 (C.A. 7) (unreported).

where the court upheld the rule, reasoning that it "disqualifies no one" but leaves it up to the members to "disqualify themselves as a matter of free choice by their unwillingness" to attend a sufficient number of meetings to qualify for candidacy (Pet. App. 33a). The court of appeals in the present case disagreed with that decision (Pet. App. 8a, n. 7), creating a conflict among the circuits.[4]

While we believe that the decision below was correct, we agree with petitioners that the conflict should be resolved and accordingly do not oppose the petition. Meeting attendance qualifications have nationwide impact. The three-year 50 percent qualification at issue here is imposed by the parent union upon each of its 5,200 local unions, affecting some 1,400,000 union members (Pet. 8). Beyond the Steelworkers, the record below shows that eleven other unions comprising nearly 25 percent of the Nation's union membership have mandatory meeting attendance preconditions to candidacy (although only one other than the Steelworkers has a three-year requirement). Many parent unions leave the matter to be determined by local option, with the result that some locals have adopted candidacy requirements as restrictive as those involved here.

The conflict should be resolved not only because of the broad impact of such rules, but also because of the inconsistency between the courts of appeals over the principles to be followed in determining reasonableness under Section 401(e). The Sixth and Seventh Circuits have now taken fundamentally different approaches to that section;

[4]A slightly different meeting attendance rule has been held unreasonable under Section 401(e) in *Brennan* v. *Local Union No. 639, International Brotherhood of Teamsters*, 494 F.2d 1092, 1099-1100 (C.A.D.C.). See also *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 405 F.2d 176 (C.A. 3), striking down a 75 percent, two-year attendance rule.

the issues presented are of national importance in the administration of the Act, and warrant consideration by this Court.[5]

Accordingly, the Secretary does not oppose the petition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WILLIAM J. KILBERG,
Solicitor of Labor.

JANUARY 1976.

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[5]In the government's petition for certiorari in *Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333, we urged the Court to grant review not only of the exhaustion-of-remedies issue which ultimately proved dispositive of the case, but also of the reasonableness of the Steelworkers' meeting attendance qualification because of the extent of its impact and the importance of the issue.